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In Re the Application of:

KELLER et al.

PCT Application No. PCT/EP04/11062

PCT Filing Date: October 4, 2004

U.S. Serial No.: 10/575,019

Filed: April 6, 2006

Atty. File No.: 2584SG-5

For: "FIRE PROTECTION GATE
AND CORRELATED FIRE
PROTECTION INSET"

RENEWED PETITION UNDER
37 C.F.R. 1.10(d)

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SHERIDAN ROSS P.C.
Brenda Carpenter

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

The Decision of the U.S. Patent and Trademark Office dated August 17, 2006 (which was initially returned as undeliverable and subsequently mailed on September 19, 2006) is noted. In the Office's opinion, the prior petition did not sufficiently establish the third criterion. To comply with the Office's request, Applicants now submit evidence in the form of: a Declaration of Susan Willson, managing partner of foreign patent prosecution for Sheridan Ross, P.C.; a Second Supplemental Declaration of Eddie Abeyta, Sheridan Ross P.C.'s designated administrator of patent filing correspondence; a correspondence delivered to the foreign associate on April 7, 2006 confirming the filing of such application via Express Mail on April 6, 2006 (Exhibit A); a facsimile confirmation of receipt of said correspondence delivered on April 7, 2006 (Exhibit B); a copy of the Express

Mailing receipt for such application (Exhibit C); and, United States Postal Service records indicating receipt of such application by the USPTO on the same day with other applications deposited on April 6, 2006 (Exhibits D - K).

Applicants direct the Office's attention to Exhibit A, which is a copy of the correspondence delivered to Grosse Bockhorni & Schumacher ("GBS") on April 7, 2006 at approximately 1:49 p.m. This correspondence, which came in to existence within one day of the filing of such application, is believed to present corroborating evidence of the April 6, 2006 filing date. Applicants also direct the Office's attention to the declaration of Susan Willson, who confirmed the filing prior to signing the correspondence delivered on April 7, 2006, and the Second Supplemental Declaration of Eddie Abeyta, who is responsible for depositing Express Mail with the USPS, and as a matter of routine only does so once per day in the evening after 5:00 p.m. Any Express Mail deposited on April 7 would therefore not have been made prior to the 1:49 p.m. transmission of correspondence to GBS. Further evidence, in the form of USPS track and confirm search results, demonstrates that such application was received at the USPTO on the same day as other applications deposited by Mr. Abeyta on April 6, 2006 (See Exhibits D - K). This comports with Mr. Abeyta's statements that the case at issue was one of several collectively filed at the same time by Express Mail the evening of April 6, 2006.

The transmission report for the facsimile correspondence to GBS clearly shows it was sent at 1:49 p.m. on April 7 (See Exhibit A), confirming that the case was filed with the USPTO on April 6, 2006. This correspondence was signed by Ms. Willson, an attorney licensed in Colorado for over 30 years, and the statements contained therein were verified prior to delivery to GBS. This record was created within one day of the correct filing date of such application, and Applicants assert that

this record meets the third criterion requested by the USPTO. Applicants believe this form of evidence, having been reviewed and executed by a licensed attorney prior to delivery, presents even stronger corroborating evidence of the correct filing date than would the ministerial task of recording Express Mailing numbers and dates in a log book, which are typically performed by non-licensed staff and are far more subject to being fabricated than the evidence presented here.

Given this compelling corroborating evidence, the error here must properly be considered as being on the part of the USPS. It is Applicants belief that USPS employees may not fully understand the importance of the deposit date when Express Mail documents are deposited. For normal mail, to ensure delivery by the next business day, the last drop off time is typically around 3:00 p.m. It is believed that deposits made after 3:00 p.m. may be viewed by some USPS employees as acceptably being processed the next day. USPS employees may not fully understand that the USPTO's procedures allocate the day of an Express Mail deposit as the official filing date for a patent application. A USPS employee accepting deposit of Express Mail after 3:00 p.m. would likely see no consequence of completing the Express Mailing receipt on the following day, particularly when the deposit is made during a time approaching the closing time for that location (e.g., here the deposit was at 6:22 p.m. and the USPS office closed at 7:00 p.m.)

In conjunction with the previous evidence submitted showing the peculiar fact that no time entry was entered on the Express Mailing receipt for the application at issue, it is suggestive that such application was not recorded accurately when it was received on April 6, 2006 (See Exhibit C).

If such application were recorded properly, the Express Mailing receipt would have included an actual time entry as is required by USPS employees accepting such mailing. Notably, the other cases filed with the subject case here were indeed accorded an April 6, 2006 deposit date and such

filing receipts do reflect proper time entries. In contrast, the April 7, 2006 USPS date has no time entry yet all the cases deposited together (on April 6, 2006) were received by the PTO on the same day (April 10).

With such new evidence, and in combination with the previously submitted petitions and exhibits thereto, Applicants respectfully request the reconsideration and favorable grant of the present petition. Applicants' counsel requests the courtesy of a telephone call in the event any further questions or concerns require further discussion or elucidation. Applicants' counsel can be reached directly at (303) 863-2977. No additional fees are believed to be owing, however, if such fees are due, please deduct them from Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Joseph E. Kovarik
Registration No. 33,005
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: 11/17/06

J:\2584\Sg-5\second renewed petition.wpd

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20 NOV 2006

In Re the Application of:

KELLER et al.

Serial No.: 10/575,019

Filed: April 6, 2006

Atty. File No.: 2584SG-5

For: "INSULATING ELEMENT FROM
MINERAL FIBERS FOR SHIPBUILDING")

) DECLARATION OF SUSAN WILLSON Legal Staff
) SUPPORT OF REQUEST FOR International Division
) CORRECTION OF NATIONAL PHASE
) FILING DATE

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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 ON <u>11/17/06</u>
BY: <u>Sheridan Ross P.C.</u>

I hereby declare as follows:

1. I have reviewed the Decision from the U.S. Patent and Trademark Office ("USPTO") dated August 17, 2006 with respect to this matter. I hereby declare that I reviewed and signed the attached correspondence to Mr. Josef Bockhorni, of Grosse Bockhorni & Schumacher ("GBS"), confirming filing of such application with the USPTO on April 6, 2006 (See Exhibit A). Upon reviewing the file for this matter, I have confirmed that this correspondence was transmitted via facsimile at 1:49p.m. on April 7, 2006. Receipt of this correspondence on April 7 at 1:49p.m. was confirmed as shown on the transmission report and in the attached facsimile transmission sent from GBS dated April 10, 2006 (See Exhibits A and B). I attest to the fact that the attached copy of the facsimile is a true and accurate copy of my original letter of correspondence.

2. I declare that it is my custom and practice, as an attorney licensed to practice in Colorado since 1971 and with Sheridan Ross, P.C. for the past 20 years, to confirm filing of documents with the USPTO prior to delivering correspondence to the client or the foreign associate counsel. I declare the statements made in the April 7 correspondence regarding the filing date of such application are true, and that the filing date of April 7, 2006 is in error. As the application was deposited with USPS via Express Mail procedures on April 6, 2006, the filing date for such application should properly be April 6, 2006.

3. I further declare that on September 6, 2006 I spoke via telephone with Patricia Booker of PCT Operations, USPTO regarding such application. Ms. Booker confirmed that such

application was received at the same time as other applications which were correctly given the April 6, 2006 deposit date, and stated that she believed this was an instance where the USPS had recorded the wrong date. After receiving the Decision of the USPTO dated August 17, 2006, I reviewed the USPS Track and Confirm Search Results for such application and other applications deposited at the same time on April 6, 2006, and personally confirmed that such application was received at the USPTO on the same time and date as said other applications (See Exhibits D - K). The application was confirmed to have been deposited with other applications, including applications filed on behalf of GBS, on April 6, 2006, and therefore the filing date of April 7 is in error.

Date: November 14, 2006 By: Susan P. Willson
Susan Willson, Esq.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

KELLER et al.

Serial No.: 10/575,019

Filed: April 6, 2006

Atty. File No.: 2584SG-5

For: "INSULATING ELEMENT FROM
MINERAL FIBERS FOR SHIPBUILDING")

) SECOND SUPPLEMENTAL
) DECLARATION OF EDDIE ABEYTA IN
) SUPPORT OF REQUEST FOR
) CORRECTION OF NATIONAL PHASE
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SHERIDAN ROSS P.C. BY: <u>Brenda Carpenter</u>

I hereby declare as follows:

1. I incorporate by reference my Declarations of June 6, 2006 and August 8, 2006.
2. I have reviewed the Decision from the U.S. Patent and Trademark Office ("USPTO") dated August 17, 2006 with respect to this matter. In compliance with the USPTO's request, the exhibits previously attached to my prior Declarations suffice to show the Express Mail number and the attorney docket number of the subject application. To establish that the national stage papers were deposited in Express Mail prior to the last scheduled pick-up on 4/6/06, I declare that as a matter of custom and routine, I hand deliver accountable mail documents to the USPS so that they are accorded a filing date on the date of such deposit. Also as a matter of custom and routine, I only deliver accountable mail once per day in the evening after 5:00p.m. and prior to the last scheduled mail pickup. This routine has been established by the Sheridan Ross, P.C. law firm to ensure that all documents to be deposited are provided to me at the close of the business day and in advance of the last scheduled pickup, and to eliminate multiple deposits with the USPS during a given day.
3. I personally deposited such documents on such date at or about 6:20p.m. and prior to the last scheduled pickup, according to the custom and routine as Sheridan Ross' designated administrator of patent filing correspondence. I further attest that on April 6, 2006, I personally delivered several other patent applications for delivery via express mail at or about 6:20p.m., and that at least one of these applications was for the particular client at issue here. I attest to the fact

that I followed the above described procedures for these other applications as well as the application which is the subject of the present petition, and that such other applications were provided with the correct filing date of April 6, 2006. The filing date of April 7, 2006 is in error.

Date: _____

11/14/06

By: _____

A large, stylized handwritten signature in black ink, appearing to read 'Eddie Abeyta', written over a horizontal line.

Eddie Abeyta

TODD P. BLAKELY
GARY J. CONNELL
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ANGELA DALLAS SEBOR, Ph.D.
MATTHEW R. ELLSWORTH

April 7, 2006

VIA FACSIMILE (011 4989 459 3869) & AIR MAIL

Mr. Josef Bockhorni
Grosse-Bockhorni-Schumacher
Forstenrieder Allee 59
München, D-81476 GERMANY

Re: U.S. Patent Application Serial No. NOT YET ASSIGNED Entitled
"FIRE PROTECTION GATE AND CORRELATED FIRE
PROTECTION INSET" in the Name of Saint-Gobain Isover
Our File No. 2584SG-5
Your Reference No. P85284 US (BO/AP);

Dear Mr. Bockhorni:

Enclosed please find copies of the Application Transmittal, Application Data Sheet, and Information Disclosure Statement as filed with the U.S. Patent Office on April 6, 2006. We will keep you informed as this application progresses.

The First Preliminary Amendment did not get filed with the application. We apologize for any inconvenience and will file it once the serial number is assigned.

Best regards.

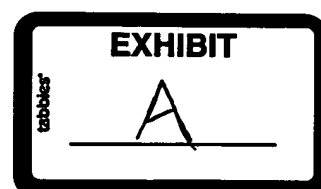
Sincerely,

SHERIDAN ROSS P.C.



Susan P. Willson, Esq.

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April 7, 2006

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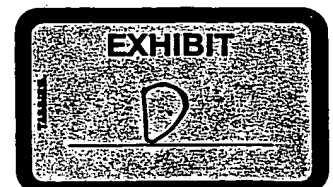
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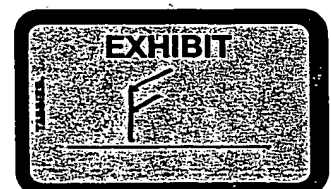
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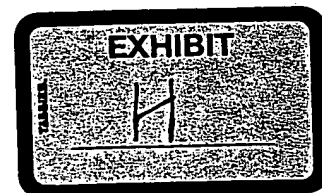
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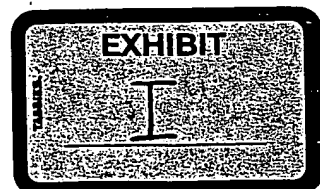
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